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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

U.S. Citizenship and Immigration Services

H2

[redacted]

FILE: [redacted] Office: BUFFALO, NY Date:

IN RE: [redacted]

PETITION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Buffalo, New York. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen and reconsider. The motion will be granted and the previous decisions of the district director and the AAO will be affirmed.

The applicant is a native and citizen of the People's Republic of China who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission into the United States by fraud or willful misrepresentation in September 1999. The applicant married a naturalized citizen of the United States on December 27, 2000 and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his spouse and child.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated August 2, 2002. The decision of the district director was affirmed on appeal by the AAO. *Decision of the AAO*, dated June 11, 2003.

On motion to reopen and reconsider, counsel asserts that additional new information warrants a motion to reopen and reconsider and that the AAO erred in applying case law and the standard for determining extreme hardship. *Motion to Reopen & Reconsider Under 8 C.F.R. Sec. 103.5(a)(1)(i).*

In support of these assertions, counsel submits a brief; a copy of the United States birth certificate of the applicant's child; a copy of a letter from a physician treating the applicant's spouse, dated July 10, 2003; copies of medical records for the applicant's spouse and a copy of the 2002 tax return filed by the applicant and his spouse. The entire record was considered in rendering this decision.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides:

> The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

8 C.F.R. § 103.5(a)(2) (2002) states in pertinent part:

> A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence.

8 C.F.R. § 103.5(a)(3) (2002) states in pertinent part:

> A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service [now Citizenship and Immigration Services (CIS)] policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

The record reflects that the applicant procured admission into the United States on September 17, 1999 by presenting a photo-substituted Chinese passport.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien himself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's wife. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals (BIA) deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

Counsel asserts that the applicant's spouse will suffer extreme hardship if she relocates to China in order to remain with the applicant. Counsel states that the applicant's wife has extensive family ties in the United States including one United States citizen child. Counsel contends that the applicant's wife has no family ties outside of the United States. *Motion to Reopen & Reconsider Under 8 C.F.R. Sec. 103.5(a)(1)(i).* Counsel further asserts that the applicant's wife operates a restaurant in the United States and would be unable to do so in China. *Id.* at 6. Counsel also contends that the applicant's spouse would not receive proper treatment for her depression in China, a country where mental health problems are stigmatized. *Id.* at 7.

Counsel does not establish hardship to the applicant's spouse if she remains in the United States maintaining proximity to her family, access to adequate mental health care, protection of her civil rights and operation of

her business. The record on motion to reopen and reconsider establishes that the applicant's wife suffered from back and hip pain as well as severe muscular compression during the course of her pregnancy. *Letter from Ronald A. Koval, MD*, dated July 10, 2003. The record further reflects that the applicant's wife was expected to make a full recovery from her pains and muscular compression and return to full time employment within 12 months of her physician's letter. *Id.* Over one year has elapsed since the applicant's spouse began experiencing the indicated pain and muscular compression; based on the record, the applicant's wife has recovered from her pregnancy complications and is able to return to employment. Further, the record fails to establish that the applicant's spouse is unable to maintain employment in order to financially provide for herself and the couple's daughter in the absence of the applicant. Counsel asserts that the applicant helps in managing and running the business, however, the record fails to demonstrate that he is uniquely qualified or situated to provide the assistance that the applicant's spouse requires. The record does not establish that the applicant is the only person able to assist the applicant's spouse in operating her restaurant. On the contrary, the AAO notes that the submitted 2002 tax return for the applicant and his spouse lists the applicant's spouse as a "restaurant partner" indicating that other individual(s) join her in the venture of owning and operating the business.

Counsel asserts that the AAO erred in concluding that the record fails to provide medical documentation to evidence the depression suffered by the applicant's spouse. *Motion to Reopen & Reconsider Under 8 C.F.R. Sec. 103.5(a)(1)(i)* at 8. Counsel contends that the submitted report from a physician treating the applicant's spouse states that the applicant has a history of depression and is currently experiencing major depression due to family circumstances. *Id.* The AAO finds that the prior decision of the AAO notes that the applicant's wife was referred for counseling and was prescribed an antidepressant. The prior decision further states that the provided information fails to establish the presence of a condition that would constitute extreme hardship. *Decision of the AAO*, dated June 11, 2003. Despite the assertions of counsel, the record on motion fails to provide further documentation of the depression suffered by the applicant's spouse and the presence in the record of one unsigned medical report based on a single visit to an unidentified physician does not establish the basis for a finding of extreme hardship.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS, supra,* held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. The AAO recognizes that the applicant's wife will endure hardship as a result of separation from the applicant. However, her situation, if she remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

Counsel asserts that consideration of the uprooting of family and separation from friends inherent in removal needs to be conducted in conjunction with consideration of all the circumstances in the application. *Motion to Reopen & Reconsider Under 8 C.F.R. Sec. 103.5(a)(1)(i)* at 8. The record fails to establish that the prior

decisions of the district director and the AAO did not consider the factors presented by the application in their totality.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the previous decisions of the district director and the AAO will not be disturbed.

ORDER: The motion is granted. The decision of June 11, 2003 dismissing the appeal is affirmed.